

Robert A. Mittelstaedt (SBN 060359)
Jason McDonell (SBN 115084)
Elaine Wallace (SBN 197882)
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104
Telephone: (415) 626-3939
Facsimile: (415) 875-5700
ramittelstaedt@jonesday.com
jmcdonell@jonesday.com
ewallace@jonesday.com

Tharan Gregory Lanier (SBN 138784)
Jane L. Froyd (SBN 220776)
JONES DAY
1755 Embarcadero Road
Palo Alto, CA 94303
Telephone: (650) 739-3939
Facsimile: (650) 739-3900
tglanier@jonesday.com
jfroyd@jonesday.com

Scott W. Cowan (Admitted Pro Hac Vice)
Joshua L. Fuchs (Admitted Pro Hac Vice)
JONES DAY
717 Texas, Suite 3300
Houston, TX 77002
Telephone: (832) 239-3939
Facsimile: (832) 239-3600
swcowan@jonesday.com
jlfuchs@jonesday.com

Attorneys for Defendants
SAP AG, SAP AMERICA, INC., and
TOMORROWNOW, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

ORACLE CORPORATION, et al.,

Plaintiffs,

v.

SAP AG, et al.,

Defendants.

Case No. 07-CV-1658 PJH

**[REDACTED] DECLARATION OF JASON
MCDONELL IN SUPPORT OF MOTION
TO COMPEL DISCOVERY
CONCERNING THIRD PARTY SUPPORT
PROVIDED BY ORACLE'S PARTNERS**

**EXHIBITS 18 AND 19 FILED UNDER
SEAL**

Date: February 10, 2009

Time: 2:00 PM

Courtroom: E, 15th Floor

Judge: Hon. Elizabeth D. Laporte

[REDACTED] MCDONELL DECL. ISO OF MOT.
TO COMPEL DOCUMENTS CONCERNING ORACLE PARTNERS
Case No. 07-CV-1658 PJH

1 I, JASON MCDONELL, declare:

2 I am partner with the law firm of Jones Day and counsel for defendants in the above-
3 captioned matter. I make this declaration based on personal knowledge and, if called upon to do
4 so, could testify competently thereto.

5 1. Attached hereto as **Exhibit 1** is a true and correct copy of Plaintiffs' Federal Rule
6 of Civil Procedure 45(b) Notice of Intent to Serve Third-Party Subpoena, served October 31,
7 2008.

8 2. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from Plaintiffs'
9 Responses and Objections to Defendant TomorrowNow, Inc.'s First Set of Document Requests,
10 Request Nos. 32, 33, 39, and 40, pages 23-25, 29-31, served September 14, 2007.

11 3. Attached as **Exhibit 3** is a true and correct copy of an excerpt from Plaintiffs'
12 Amended and Supplemental Responses and Objections to Defendant TomorrowNow, Inc.'s First
13 Set of Interrogatories, Interrogatory No. 11, pages 28-32, served October 26, 2007.

14 4. Attached as **Exhibit 4** is a true copy and correct of an excerpt from Plaintiffs'
15 Responses and Objections to Defendant TomorrowNow, Inc.'s First Set of Interrogatories,
16 Interrogatory No. 9, pages 24-25, served September 14, 2007.

17 5. Attached hereto as **Exhibit 5** is a true and correct copy of a webpage from
18 CedarCrestone's website, available at <http://www.cedarcrestone.com/sol-ps-cms-main.php>.

19 6. I attended the deposition of Oracle pursuant to Federal Rule of Civil Procedure
20 30(b)(6) that occurred on September 26, 2008. Among other topics, Oracle designated Ms. Buffy
21 Ransom to testify on the subject of customer support for Oracle enterprise software customers.
22 Attached hereto as **Exhibit 6** is a true and correct copy of the cover page and pages 78-82 from
23 the transcript of that deposition, describing Chris Enyeart's third party support of Oracle
24 enterprise software. Additionally, I am informed and believe that Chris Enyeart works for
25 Mountain Business Solutions in Denver, Colorado,
26 <http://mountainbusinesssolutions.com/WhoAreWe.html>, a company that represents itself as an
27 Oracle Partner, <http://mountainbusinesssolutions.com/index.html>.
28

1 7. Attached hereto as **Exhibit 7** is a true and correct copy of a letter from Dale A.
2 Coggins, counsel for CedarCrestone, Inc., sent to Lucia MacDonald, counsel for Plaintiffs, dated
3 November 19, 2008.

4 8. Attached hereto as **Exhibit 8** is a true and correct copy of the Second Notice of
5 Deposition to Oracle Corporation, served June 17, 2008.

6 9. Attached hereto as **Exhibit 9** is a true and correct copy of an excerpt from Oracle's
7 Opposition to Defendants' Motion to Compel No. 1, pages 4-7, dated February 7, 2008.

8 10. I attended the deposition of Oracle pursuant to Federal Rule of Civil Procedure
9 30(b)(6) that occurred on September 23, 2008. Among other topics, Oracle designated Mr.
10 Richard Cummins to testify about Oracle policies concerning third party support and companies
11 known to Oracle to have provided third party support for PeopleSoft and J.D. Edwards enterprise
12 software. Attached hereto as **Exhibit 10** is a true and correct copy of the cover page and pages
13 351-52 from the transcript of that deposition, confirming Plaintiffs' objection to Defendants'
14 inquiry into Oracle partners that provide third party support.

15 11. Attached hereto as **Exhibit 11** is a true and correct copy of an excerpt from Special
16 Master Legge's Report and Recommendations Re: Discovery Hearing No. 1, page 7, dated
17 February 27, 2008, Docket No. 66.

18 12. Attached hereto as **Exhibit 12** is a true and correct copy of an excerpt from the
19 Transcript of Proceedings, pages 61-62, dated August 28, 2008.

20 13. Attached hereto as **Exhibit 13** is a true and correct copy of an excerpt from the
21 discovery hearing transcript (*unofficial*), pages 63-67, dated November 25, 2008. Transcribed
22 from an audio CD from the Court.

23 14. Attached hereto as **Exhibit 14** is a true and correct copy of Defendants' Federal
24 Rule of Civil Procedure 45(b) Notice of Intent to Serve Third-Party Subpoena, served November
25 21, 2008. This subpoena was served upon counsel for CedarCrestone, Dale A. Coggins, who
26 agreed to accept service, via email, on November 24, 2008.

27 15. Plaintiffs' counsel informed me via a telephone conference on or about December
28 12, 2008 that Plaintiffs had withdrawn the subpoena Plaintiffs served upon CedarCrestone.

1 16. Attached hereto as **Exhibit 15** is a true and correct copy of a letter sent via
2 facsimile by Dale A. Coggins, counsel for CedarCrestone, Inc., to me, dated December 8, 2008,
3 objecting to Defendants' Federal Rule of Civil Procedure 45(b) Third-Party Subpoena served
4 upon CedarCrestone, Inc.

5 17. Attached hereto as **Exhibit 16** is a true and correct copy of Plaintiffs' Notice of
6 Objections and Objections to Third-Party Subpoena Served by Defendants on Non-Party
7 CedarCrestone, Inc. served December 8, 2008.

8 18. I spoke with Plaintiffs counsel via a telephone conference on or about December
9 12, 2008, and they requested that Defendants move to compel Plaintiffs, rather than
10 CedarCrestone, to produce documents that are the subject of the motion to compel, filed herewith.

11 19. Attached hereto as **Exhibit 17** is a true and correct copy of an Oracle document
12 titled "Oracle and PeopleSoft Alliances and Channels Guide," located at
13 www.oracle.com/peoplesoft/ac_guide.pdf.

14 20. Attached hereto as **Exhibit 18** is a true and correct copy of an email from Juan C.
15 Jones to Dave Hare, forwarding an email from Rick Cummins to Juan C. Jones and Chris
16 Madsen, on January 2, 2007 and entitled "Fw: Applications support initiatives," Bates stamped
17 ORCL00087618—00087620.

18 21. I am informed and believe that CedarCrestone is providing support services for at
19 least one company that formerly was a TomorrowNow customer.

20 22. Attached hereto as **Exhibit 19** is a true and correct copy of an email from Holger
21 Mueller to Glenn Smith, et al., titled "Re: Relaunch of Support Offering for SAP Customers: aka
22 OneStop," dated September 11, 2006, Bates stamped ORCL00025701-02.

23 //

24 //

25 //

26 //

27 //

1 I declare under penalty of perjury under the laws of the United States and the State of
2 California that the foregoing is true and correct.

3 Executed this 15th day of January 2009 in San Francisco, California.
4

5 _____
6 /s/ Jason McDonell
7 Jason McDonell

8 Attorneys for Defendants SAP AG, et. al.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28